I am satisfied on the evidence that at the material time the appellants were in fact dealing with the respondents and not the partnership and were fully aware of it.

It was further argued on behalf of the appellants that the person who signed the letter of the 27th December, 1952, was not authorised to do so.

As was pointed out by the trial judge the evidence of the appellants' witness Bui Keng Sui who was their correspondence clerk and who wrote the letter of the 27th December, 1952, clearly established that the letter was written on the express instructions of the 1st appellant and it was intended that the respondents should rely on it. That being so it is not, in my view, now open to the appellants to rely on this defence but even if they could the respondents were on the evidence entitled to assume that the signature referred to was that appearing on the letter viz., the 1st appellant's.

The respondents relied on the well established principle enunciated by Cockburn C.J. in *Edmunds* v. *Bushell*[3] that if a person employs another as an agent in a character which involves a particular authority, he cannot by a secret reservation divest himself of that authority. Finally the letter, as did all the others, bore the appellants' chop which according to the evidence made it binding.

In the result the appeal fails on all points and must be dismissed with costs.

Wee Chong Jin J.: I agree that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Elias Bros.; Rodyk & Davidson.*

CHOO SEE KEAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Hill J.) February 24, 1959]

[Alor Star — Criminal Appeal No. 70 of 1958]

Gaming — Characters lottery — Expert evidence — Description of modus operandi — Not necessary — Description and explanation of exhibits.

Characters lottery constitutes a lottery within the meaning of the Common Gaming Houses Ordinance, and the summary Courts have for their guidance descriptions of the operation of these lotteries in judgments of the High Court and by the full Court of Appeal in *Lee Seow* v. *Public Prosecutor*[2].

Descriptions by expert witnesses of the *modus operandi* of the characters lottery are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. All that is now necessary is a description and explanation by the expert witness of the exhibits and careful examination and consideration of them by the trial Magistrate in the light of the expert's opinion to enable him to form his own independent judgment.

Cases referred to:—

(1) *Teoh Ng Choon & Ors.* v. *Public Prosecutor* [1955] M.L.J. 58.

(2) *Lee Seow v. Public Prosecutor* [1958] M.L.J. 245, C.A.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Thean-Chu for the appellants.

B. Sheldon (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Hill J.: The appellants were convicted and fined by the Sungei Patani Magistrate for an offence contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, No. 26 of 1953. In so far as the facts are concerned it is sufficient to say that all four were caught red-handed carrying on a public lottery when a party of police raided a saw-mill at Sin Hup Huat.

During the course of the trial a newspaper was received in evidence to prove the date of a race meeting and this gave rise to one of the grounds of appeal. I am not concerned, however, with the question of the admissibility or otherwise of newspapers for it is no part of the prosecution case in proceedings of this nature to prove that a race meeting in fact took place on a particular day. In any event, this ground of appeal was abandoned by appellants' Counsel.

The only question I have to consider is whether the evidence of the expert witness was satisfactory or so inadequate that the Magistrate should not have arrived at the decision he did.

The expert witness in this case was a Detective Police Constable attached to C.I.D. Headquarters, Alor Star. He omitted to give any description whatever of the manner in which the Character's Lottery is operated, but he did give detailed evidence of his reasons for the opinion that the exhibits in the case related to betting and staking in the Character's Lottery. These exhibits were personally examined by the learned Magistrate and he agreed with the expert's opinion after such careful examination.

As already stated the four appellants were caught red-handed during a police raid. Their conduct was such that the only reasonable inference that could be drawn was that all had guilty knowledge and that they were acting jointly.

It is obvious that the Magistrate used his own knowledge and experience regarding the manner in which these lotteries are operated without any assistance from the expert witness, but in coming to his decision regarding the exhibits the Magistrate had ample assistance from this witness and also formed his own conclusions. In the result he rejected the defence and convicted the four appellants.

In my decision in *Teoh Ng Choon & Ors.* v. *Public Prosecutor*[1] I endeavoured to explain a Magistrate's duty, as I saw it, expressly in relation

to the evidence of an expert witness in proceedings brought under Section 4(1)(c) of the Common Gaming Houses Ordinance. I appreciated at the time that I had gone further in relaxing the explanatory evidence required of the expert witness and placing added responsibility on the Magistrate than had any previous decision on the subject. In view of subsequent decisions and in particular the one I mention below I propose to apply the principles I then set out in deciding the present appeal.

It is now not only settled law that the Character's lottery constitutes a lottery within the meaning of the Common Gaming Houses Ordinance, but the summary Courts have for their guidance descriptions of the operation of these lotteries in judgments of the High Court and recently by the full Court of Appeal in *Lee Seow* v. *Public Prosecutor*[2]. It seems to me therefore that descriptions by expert witnesses of the *modus operandi* of these lotteries are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. In my view all that is now necessary is precisely what took place in the present case, namely a description and explanation by the expert witness of the exhibits and careful examination and consideration of them by the trial Magistrate in the light of the expert's opinion to enable him to form his own independent judgment. This was done in the case under consideration and the appeals are dismissed.

Appeal dismissed.

GHANI BIN JONIT v. REG.

[C. C. A. (Rose C.J., Tan Ah Tah and Wee Chong Jin JJ.) March 23, 1959]

[Singapore — Criminal Appeal No. 1 of 1959]

Evidence — Eye-witnesses — Discrepancies — Weight of evidence — Matter for the jury.

Where a case depends to a great extent upon the evidence of eye-witnesses, and there are discrepancies not only between the evidence given in the Preliminary Inquiry and that before the trial Court but also between the various witnesses themselves as to details of the episode, the weight to be given to discrepancies in any particular case is a matter for the jury.

COURT OF CRIMINAL APPEAL.

F. B. Oehlers for the appellant.

A. W. Ghows (Crown Counsel) for the respondent.

Rose C.J.: The facts of this case are sufficiently set out in the charge, and it is unnecessary for us to refer to them in any detail. Counsel for the appellant has raised with great care on behalf of his client a number of points, but in fact the serious matters for our consideration fall under three heads. First, as to the discrepancies in the evidence; secondly, as to the possibility of identification; and thirdly, whether it was established that a payment of money was made to the appellant in the course of the afternoon some three hours or so before the episode in question.

First, with regard to the discrepancies. This is one of those cases that depend to a great extent, upon the evidence of eye-witnesses. Now, as almost invariably happens in cases of this sort, there are discrepancies not only between the evidence given in the Preliminary Inquiry and that before the trial court, but also between the various witnesses themselves as to details of the episode. The weight to be given to discrepancies in any particular case is eminently a matter for the Jury. The question we have to consider here is whether the charge of the learned Judge was sufficiently clear to enable them to make up their minds on this matter. There has been no suggestion — indeed, we have studied the charge and there is no ground for any such suggestion — that the matter was not properly put by the trial Judge. We do not, therefore, consider that there is any substance in that ground of appeal.

Now, a matter that in the course of the trial became of some importance was the question of the payment of the sum of $90, and the prosecution case is that that sum of money was paid on the afternoon of the day in question to the appellant and that there was therefore no legitimate reason for the appellant to return to the scene on that evening some three hours later, the prosecution suggestion, of course, being that the only reason for his return was that he wished to commit an act of vengeance against the witness, Kow Sim Chiang. The defence — and this was stated in evidence by the appellant himself — was that the purpose of his going to the scene that evening after dark was to obtain this money, and that he had not in fact received satisfaction in the afternoon. If the defence contention is true on that point, it does give an innocent explanation for the appellant's presence at the scene, and that matter therefore would demand the very careful attention of the Jury.

Now, with regard to that, the position is that the witness in question states that he paid the money. Another witness, Mr. Vander Ven, says that while he did not actually see the money handed over, he saw the wife of the witness Kow Sim Chiang take the money from the purse and he presumed that payment was made, and it was on the basis of that presumption that he made a very relevant observation to the appellant to the effect — "Now that you have got your money can we not be friends?" And according to the evidence — there was no suggestion in cross-examination of this witness to the contrary — the appellant did not dispute the payment at that time.

Now in addition to that you have the position that this witness Kow Sim Chiang was apprehensive as a result of the attitude of the appellant during this visit, and he therefore went and made a report to the police to the effect that the money